



May 24, 2016

CLIENT ALERT

Spokeo v. Robins – Standing, Concrete Harm and the Erosion of Hyper Technicality

On May 16, 2016, the United States Supreme Court (“SCOTUS”) issued a highly anticipated decision involving the Fair Credit Reporting Act (the “FCRA”). In it, the Court examined whether Congress can confer statutory standing for a person to file a lawsuit, as required by Article III of the U.S. Constitution (the legal right to bring a case), where a plaintiff has not suffered any actual injury. In its 6-2 decision, SCOTUS held that a plaintiff does not automatically satisfy the injury-in-fact requirement just because a statute grants a right and purports to authorize a lawsuit to vindicate it. Rather, Article III standing requires a plaintiff to have a concrete injury even where a statute may have been violated “technically” or “procedurally” on its face.

This decision reverses the Ninth Circuit’s decision that found in favor of the plaintiff, with SCOTUS explaining that the injury-in-fact requirement requires a plaintiff to demonstrate that he or she suffered “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” To illustrate the concept, SCOTUS offered a scenario where a consumer’s zip code on his or her credit report was incorrect - a technical violation of the FCRA - but where it was difficult to envision any “concrete” injury that could result from the error.

Even though this case was initiated under the FCRA, its holding cannot be limited to that statute. The decision impacts and extends to all federal cases brought under other sections of strict liability consumer protection statutes, such as the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act, and the Truth in Lending Act. Essentially, if a plaintiff suffers no concrete harm (tangible or intangible), but instead alleges a statutory or hyper technical violation of law, he or she will not have standing to bring a claim in federal court either individually or on behalf of a class of individuals.

Warshaw Burstein Partner [Scott E. Wortman](#), whose practice concentrates in creditors' rights and financial services litigation, was quoted in an article, [Experts Weigh in on Spokeo Decision and What it Means for Collections Industry](#), published online at AccountsRecovery.net on May 18, 2016.

Warshaw Burstein's [Creditors' Defense Litigation and Compliance Group](#) advises on all facets of consumer protection compliance and provides representation in litigation defense, investigations and transactions. If you have questions about the United States Supreme Court's decision and its implications, please contact [Scott E. Wortman](#) or your regular [Warshaw Burstein](#) attorney.

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Warshaw Burstein represents clients in the New York metropolitan area, across the United States and around the world.